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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

19 LUCIA GRECO,

20 Plaintiff,

21 v.

22 UBER TECHNOLOGIES, INC.; RASIER,
23 LLC; and RASIER-CA, LLC,

24 Defendants.

25 Case No. 4:20-cv-02698-YGR

26 **MEMORANDUM OF POINTS AND
27 AUTHORITIES IN SUPPORT OF
28 DEFENDANTS UBER TECHNOLOGIES,
29 INC., RASIER, LLC AND RASIER-CA,
30 LLC'S MOTION TO COMPEL
31 ARBITRATION**

32 Date: September 1, 2020
33 Time: 2:00 p.m.
34 Judge: Hon. Yvonne Gonzalez Rogers
35 Location: 1301 Clay Street, Ctrm. 1,
36 4th Floor.

37 Complaint Filed: April 19, 2020

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1 **I. INTRODUCTION**

2 After networking over 1,500 completed rides via Uber’s software applications for the
 3 ridesharing industry, Plaintiff Lucia Greco now seeks to disavow a part of her binding contract with
 4 Uber—the arbitration agreement. Before first using Uber’s technology, which networks riders with
 5 registered independent, third-party transportation providers (“Drivers”), Plaintiff registered an Uber
 6 rider account in March 2013. During that process, she expressly agreed to be bound by Uber’s Terms
 7 and Conditions (the “Terms”), which included a clear and conspicuous arbitration agreement and
 8 delegation clause (“Arbitration Agreement”). Plaintiff subsequently received notice of and accepted
 9 an updated version of the Arbitration Agreement issued in November 2016.

10 The Court should reject Plaintiff’s efforts to evade the Terms to which she has agreed and order
 11 Plaintiff to arbitrate her claims. Under the terms of the Arbitration Agreement, Plaintiff agreed to
 12 arbitrate “any dispute, claim or controversy” she may have against Uber,” including those “arising out
 13 of or relating to” the Terms and its existence, breach, termination, enforcement, interpretation, or
 14 validity, or Plaintiff’s access to or use of Uber’s application or services. The arbitrator and not the
 15 Court must therefore resolve any disputes about the validity, application, scope or enforceability of
 16 the Arbitration Agreement. *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010). Even if the
 17 Court decided to resolve any such disputes (and it should not), the result is the same: arbitration.

18 Plaintiff has acknowledged she is bound by the Arbitration Agreement. Indeed, she initially
 19 brought this dispute in the proper forum, in arbitration before AAA, attaching Uber’s Terms as the
 20 basis of her filing in that forum, an express acknowledgement that she had agreed to them. Plaintiff,
 21 however, changed course and filed the instant action in federal court. But there was no basis to do so,
 22 and her dispute remains subject to arbitration.

23 Judges in California and nationwide have affirmed Uber’s Arbitration Agreement as valid and
 24 enforceable. *See e.g., West v. Uber Technologies*, No. 2:18-cv-3001-PSG-GJS, ECF No. 47, at 7 (C.D.
 25 Cal. Sept. 5, 2018); *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 80 (2d Cir. 2017); *Cordas v. Uber Techs.,*
 26 Inc., 228 F. Supp. 3d 985, 992 (N.D. Cal. 2017); *Cubria v. Uber Techs., Inc.*, 242 F. Supp. 3d 541,
 27 548 (W.D. Tex. 2017); *Fadaee v. Uber Techs. Inc.*, LASC Case No. BC681145 (2018); *Nielsen v.*
 28 *Uber Techs. Inc.*, LASC Case No. BC705695 (2019); *Feld v. Uber Techs. Inc.*, LASC Case No.

1 19STCV26766 (2020); *Harounsheily v. Uber Techs. Inc.*, LASC Case No. 19STCV05712 (2019).¹

2 **II. FACTUAL BACKGROUND**

3 **A. Plaintiff Accepted Uber's Terms & Conditions, Including The Arbitration
4 Agreement Contained Within, Not Once, But Twice.**

5 **1. Plaintiff First Accepted Uber's Terms When She Registered To Use The
6 Uber App.**

7 Uber is a technology company that created and maintains a software application (the “Uber
8 Rider App”) that enables registered riders seeking rides to network with registered Drivers looking to
9 provide rides for profit in the rider’s geographic area. Declaration of Rosemary Barajas (“Barajas
Decl.”) ¶ 2.

10 Before riders like Plaintiff can use the Uber Rider App and request rides, they must first create
11 an Uber account and accept Uber’s Terms & Conditions. *See id.*, ¶ 4.

12 Uber’s records show that Plaintiff’s rider account was created via Uber’s website on a web
13 browser that she accessed on a mobile device running an Android operating system. *Id.* ¶ 5. During
14 the time when Plaintiff registered for a rider account via the Uber website, the website registration
15 page required a user to input information including name, email address, password (to be selected by
16 the user), language, mobile phone information, payment information, and promotion code (if any) into
17 a form on a single webpage.² *Id.* ¶ 7, Exs. A & B. Immediately below these fields was a bolded
18 section entitled “**Legal Information.**” *Id.* ¶ 8. Directly below that bolded section heading, the
19 following notice was displayed: “By signing up I agree to the Uber **Terms and Conditions** and
20 **Privacy Policy** and understand that Uber is a request tool not a transportation carrier.” The phrases
21 “Terms and Conditions” and “Privacy Policy” were in bold and underlined, indicating hyperlinks. If
22 the user clicked the “Terms and Conditions” hyperlink, the relevant Terms then in effect would have
23 been displayed. *Id.* ¶ 8.

24 _____
25 ¹ The state court Orders cited are attached to Defendants’ Request for Judicial Notice (“RJN”) as
Exhibits A-D.

26 ² Exhibits A, B, C and D to the Declaration of Rosemary Barajas are historical screenshot images
27 from the Internet Archive, sometimes referred to as the “Wayback Machine.” (See Barajas Decl. ¶ 6
Exs. A-B; Barajas Decl. ¶ 9 Exs. C-D.) As explained in Uber’s concurrently filed Request for
28 Judicial Notice, courts routinely take judicial notice of webpages obtained from the Wayback
Machine. (RJN ¶ 1.)

1 Below the conspicuous—and linked—Terms and Conditions, but immediately above the “Sign
 2 Up” button on the bottom of the webpage, was a checkbox. To the right of that checkbox, the
 3 following bolded single-sentence notice was visibly displayed: “**I agree to the Uber Terms and**
 4 **Conditions and Privacy Policy**”. *Id.* ¶ 9. Plaintiff would not have been able to complete the signup
 5 process without checking the box confirming agreement to Uber’s Terms. If a user had attempted to
 6 do so, the following error message in red font would have appeared above the checkbox: “You must
 7 agree to the Uber Terms and Conditions and Privacy Policy to continue.” *Id.* ¶ 9.

8 Upon completing the above fields, and checking the box confirming agreement to Uber’s
 9 Terms and Conditions and Privacy Policy, the user would then be able to create a rider account by
 10 clicking the red “Sign Up” button at the bottom of the webpage. *Id.* ¶ 10. Ms. Greco could not have
 11 completed the account creation process without completing the aforementioned steps. *Id.* ¶ 11.
 12 Plaintiff completed these steps on March 15, 2013. *Id.* ¶¶ 5-10. Accordingly, Plaintiff is bound by
 13 Uber’s Terms, including the mandatory arbitration provision contained therein.

14 **2. Plaintiff Agreed To Uber’s Terms A Second Time By Continuing To Use**
 15 **The Uber App After Receiving The November 2016 Updated Terms.**

16 In addition to agreeing to Uber’s Terms when she first registered to use the Uber Rider App in
 17 March 2013, Plaintiff *also* agreed to an updated version of Uber’s Terms in November 2016. *See*
 18 Barajas Decl. ¶¶ 14-15. In November 2016, Uber emailed all riders – Plaintiff included – and notified
 19 them of Uber’s updated Terms (the “November 2016 email”). *Id.* & Ex. F. Uber sent the November
 20 2016 email to Plaintiff on November 14, 2016. The November 2016 email informed riders that “we’ve
 21 made some updates to our US Terms of Use” and further notes that the updates “revise[] our arbitration
 22 agreement which explains how legal disputes are handled.” *Id.* The email also states that the “updated
 23 Terms are effective as of November 21, 2016, so please make sure to read them fully.” *Id.* The email
 24 also instructs that the reader can “access [the Terms] here.” The word “here” is displayed in bright
 25 green text, indicating that it is a hyperlinked text. When a rider clicks the link, she would have been
 26 taken to a screen that displays the November 21, 2016 Terms. The email also states that “[i]f you use
 27 our app or other services on or after that date, you’re confirming you’ve read and agree to the updated
 28 Terms.” *Id.*

1 After receiving the November 2016 email, Plaintiff continued to use the Uber Rider App to
 2 network rides with Drivers more than one thousand times, including as recently as July 1, 2020.
 3 Barajas Decl., ¶ 16.

4 **B. Uber's Terms Include A Prominent, Valid Arbitration Agreement.**

5 The Terms & Conditions to which Plaintiff assented when she registered in March 2013, state
 6 in the first section that a “legal agreement” between the rider and Uber was created wherein the rider
 7 would be “bound by the terms and conditions of the Agreement, and any future amendments and
 8 additions to this Agreement as published from time to time. . . .” *Id.* ¶ 13, Ex. E. The version of the
 9 Terms then in effect, dated September 14, 2012 (“2012 Terms”), included the Arbitration Agreement,
 10 clearly labeled **“Dispute Resolution,”** stating: “You and Company agree that any dispute, claim or
 11 controversy arising out of or relating to this Agreement...or the use of the Service or Application...will
 12 be settled by binding arbitration.” *Id.* (Bold in original.) The Arbitration Agreement further provided
 13 that threshold issues of arbitrability, including disputes regarding “enforcement, interpretation or
 14 validity” of the Agreement were delegated to the arbitrator.³ *Id.* It also included an amendment
 15 provision allowing Uber to change the Arbitration Agreement, and explained how Plaintiff could reject
 16 any such changes. *Id.* (Changes). The 2012 Terms notified Plaintiff in pertinent part that Uber:

17 reserves the right to modify the terms and conditions of this Agreement
 18 or its policies relating to the Service or Application at any time, effective
 19 upon posting of an updated version of this Agreement on the Service or
 20 Application. You are responsible for regularly reviewing this
 21 Agreement. Continued use of the Service or Application after any such
 22 changes shall constitute your consent to such changes.

23 *Id.*

24 Pursuant to the parties’ agreement, Uber exercised its right to modify the 2012 Terms and the
 25 Arbitration Agreement following Plaintiff’s initial assent to them, *id.*, and in November 2016, notified
 26 Plaintiff of these changes. Barajas Decl., ¶ 14, Ex. F. Those modifications do not affect the result

27

 28 ³ The 2012 Terms also incorporate the AAA Commercial Rules (*Id.* [Arbitration Rules and Governing Laws]), which
 29 provide (in pertinent part): “The arbitrator shall have the power to rule on his or her own jurisdiction, including any
 30 objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim
 31 or counterclaim.” *See,* <https://www.adr.org/sites/default/files/Commercial%20Arbitration%20Rules%20and%20Mediation%20Procedures%20JUN%202001%2C%202009%20Fee%20Schedule%20JUN%202011%2C%202010.pdf> (effective June 1, 2009) at R-7.

1 here. The version of the Arbitration Agreement accepted by Plaintiff when Uber sent the November
 2 2016 email, like the version to which Plaintiff initially agreed, is broad:

3 You and Uber agree that any dispute, claim or controversy arising out
 4 of or relating to (a) these Terms or the existence, breach, termination,
 5 enforcement, interpretation, or validity thereof, or (b) your access to or
 use of the Services at any time, whether before or after the date you
 agreed to the Terms, will be settled by binding arbitration

6 Nov. 21, 2016 U.S. Terms of Use, Barajas Decl., ¶ 15, Ex. G, § 2 (the “2016 Terms”).

7 Like the 2012 Terms, the 2016 Terms delegate to the arbitrator all questions about the
 8 enforceability and scope of the Arbitration Agreement:

9 The parties agree that the arbitrator (“Arbitrator”) and not any federal,
 10 state, or local court or agency, shall have exclusive authority to resolve
 11 any disputes relating to the interpretation, applicability, enforceability
 12 or formation of this Arbitration Agreement, including any claim that all
 13 or any part of this Arbitration Agreement is void or voidable. The
 Arbitrator shall also be responsible for determining all threshold
 arbitrability issues, including issues relating to whether the Terms are
 unconscionable or illusory and any defense to arbitration, including
 waiver, delay, laches or estoppel.

14 *Id.* § 2 (“Rules and Governing Law”). The Arbitration Agreement further specifies (1) that the
 15 arbitration will be administered by the American Arbitration Association (“AAA”), (2) that the AAA
 16 will apply its “Consumer Arbitration Rules and the Supplementary Procedures for Consumer Related
 17 Disputes (the ‘AAA Rules’) then in effect,”⁴ and (3) that the “Federal Arbitration Act will govern [the]
 18 interpretation and enforcement” of the agreement. *Id.* In addition to citing the rules directly, the 2016
 19 Terms also provide users with the AAA’s “ADR.org” website address and the AAA’s telephone
 20 number. *Id.*

21 The Arbitration Agreement also includes several features that ensure that consumers have a
 22 simple, efficient, and fair means of resolving any disputes. For example, riders may arbitrate any
 23 disputes in the counties where they reside (*id.* § 2 (“Location and Procedure”)), and retain the option
 24 to commence certain kinds of claims in small claims court (*id.* § 2 (“Agreement to Binding Arbitration
 25 Between You and Uber”)). The arbitrator is empowered to award declaratory and injunctive relief in

26
 27 ⁴ Rule 14 of the Consumer Rules delegates threshold issues of arbitrability to the arbitrator, similar to Rule 7 of the
 28 Commercial Rules incorporated into the 2012 Terms. *See*, https://adr.org/sites/default/files/Consumer_Rules_Web_1.pdf
 (effective September 1, 2014) at R-14.

1 the rider's favor through individual arbitration. *Id.* § 2 ("Arbitrator's Decision"). And, unless the
 2 rider makes a claim for more than \$75,000 or the arbitrator finds that a rider's claims are frivolous or
 3 brought for an improper purpose, Uber will pay all filing, administrative, and arbitrator fees associated
 4 with the arbitration. *Id.* § 2 ("Fees").

5 **C. Plaintiff Acknowledged The Validity Of Her Arbitration Agreement And
 6 Initiated Arbitration Before AAA Prior To Changing Course And Filing In This
 Court.**

7 By completing all the steps necessary to register for Uber's services, accessing Uber's services
 8 and the Uber Rider App, networking rides from Drivers after first registering and even after Uber's
 9 Terms had been updated on November 21, 2016, Plaintiff unequivocally agreed to Uber's Terms,
 10 including the Arbitration Agreement. *See generally* Barajas Decl.

11 Plaintiff then took further steps recognizing her agreement. Plaintiff filed a demand for
 12 arbitration with the AAA on March 27, 2020. Compl., ¶ 52; *see also* Demand for Arbitration,
 13 Declaration of Morgan Jackson ("Jackson Decl."), ¶ 5 Ex. A. In response to the AAA Demand Form,
 14 Plaintiff attached a copy of Uber's Terms. *See id.* Plaintiff did not serve the demand on Uber until
 15 almost a month later on April 21, 2020. *See* Jackson Decl., ¶ 5. Uber first learned about the existence
 16 of the arbitration demand on April 18, 2020, when the AAA sent a letter to Plaintiff's counsel and a
 17 paralegal for Uber, stating vaguely that Uber had not complied with the AAA's policies regarding
 18 consumer claims, and that the AAA had "administratively closed" the arbitration that Plaintiff had
 19 opened—a decision made before Uber was even aware of Plaintiff's arbitration demand. *Id.* ¶ 4;
 20 Compl. Ex. A (the "April 18, 2020 AAA Letter"). Uber promptly contacted the AAA regarding its
 21 April 18, 2020 Letter and discovered that the AAA had administratively closed the file in Plaintiff's
 22 case because Uber had not paid fees in two unrelated matters pending before the AAA and thus
 23 decided, unbeknownst to Uber, to not administer Uber matters.⁵ *Id.* ¶¶ 6-7.

24 Uber paid the outstanding fees for those cases within days after learning about this issue, and
 25 the AAA permitted Uber to continue arbitrating cases before the AAA—on April 30, 2020. *Id.* ¶ 9.
 26

27

 28 ⁵ These two unrelated matters had been withdrawn prior to AAA administration. Uber's Insurer mistakenly believed that
 if a demand was withdrawn or settled before any AAA administration began, AAA would not require a filing fee. However,
 once filed, AAA requires payment of filing fee even if demand is withdrawn.

1 Afterwards, Uber asked the AAA to proceed with Plaintiff's arbitration. *Id.* ¶ 10. The AAA responded
 2 that, because the case was administratively closed, "the AAA will not reopen the matter unless the
 3 parties agree to reopen the matter, or the AAA will abide by any court order directing the manner in
 4 which the previously closed case should or should not proceed." *Id.* ¶ 10 & Exhibit D. Alternatively,
 5 the AAA stated that it "would administer this case" if Plaintiff were to refile her demand. *Id.*
 6 Notwithstanding, Plaintiff refused to refile her demand and proceeded to file the instant lawsuit in
 7 court, in material violation of her agreement with Uber and necessitating this motion. *Id.* ¶ 11.

8 As discussed below, Plaintiff's claims are encompassed by the Arbitration Agreement and
 9 must be addressed in arbitration, not in court.

10 **III. LEGAL STANDARD**

11 The Federal Arbitration Act ("FAA") reflects a liberal federal policy favoring arbitration, and
 12 requires that arbitration agreements be rigorously enforced. *See Kindred Nursing Centers Ltd. P'ship*
 13 *v. Clark*, 137 S. Ct. 1421, 1424 (2017) (courts required "to place arbitration agreements on an equal
 14 footing with all other contracts" (internal citation omitted)); *AT&T Mobility LLC v. Concepcion*, 563
 15 U.S. 333, 339 (2011). "[T]he FAA's purpose is to give preference (instead of mere equality) to
 16 arbitration provisions." *Mortensen v. Bresnan Commc'n's LLC*, 722 F.3d 1151, 1160 (9th Cir. 2013).
 17 Thus, "courts must 'rigorously enforce' arbitration agreements according to their terms, including
 18 terms that 'specify with whom [the parties] choose to arbitrate their disputes,' and 'the rules under
 19 which that arbitration will be conducted.'" *American Exp. Co. v. Italian Colors Restaurant*, 570 U.S.
 20 228, 233 (2013) (emphasis and internal citation omitted). "As arbitration is favored, those parties
 21 challenging the enforceability of an arbitration agreement bear the burden of proving that the provision
 22 is unenforceable." *Mortensen*, 722 F.3d at 1157 (citing *Green Tree Fin. Corp. Ala. v. Randolph*, 531
 23 U.S. 79, 91-92 (2000)).

24 **IV. ARGUMENT**

25 **A. The FAA Governs the Agreement.⁶**

26 The parties' operative Arbitration Agreement is subject to the FAA for two independent

28 ⁶ Unless otherwise stated, the remaining references to Uber's Terms refer to the 2016 Terms.

1 reasons. First, the 2016 Arbitration Agreement expressly provides that “[t]he Federal Arbitration Act
 2 . . . will govern [the Agreement’s] interpretation and enforcement and proceedings pursuant thereto.”
 3 (Barajas Decl., ¶ 15, Ex. G, § 2.) Thus, the parties clearly intended the FAA to apply, and the Court
 4 should employ the parties’ agreed upon choice of law. *See Buckeye Check Cashing, Inc. v. Cardega*,
 5 546 U.S. 440, 442-43 (2006) (applying the FAA to resolve motion to compel brought in state court
 6 where the parties selected the FAA to govern in their arbitration agreement).

7 Second, the FAA applies to agreements (like the one at issue here) evidencing a transaction
 8 involving commerce. *See* 9 U.S.C. §§ 1-2; *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 274-
 9 77 (1995) (interpreting the FAA’s “involving commerce” provision as broadly as the phrase “affecting
 10 commerce”; the FAA should be applied with the full reach of Congress’ powers under the Commerce
 11 Clause). After Plaintiff agreed to Uber’s 2012 Terms, Uber authorized her to use the Uber Rider App.
 12 Barajas Decl. ¶¶ 4-10. Where, as here, the Uber Rider App enables riders to network with Drivers via
 13 the Internet in hundreds of cities throughout the United States, the “involving commerce” requirement
 14 has been met, as many courts have found. (*Id.* ¶2; *see Cordas*, 228 F. Supp. 3d at 987 (“Because
 15 Uber’s terms and conditions are ‘a contract evidencing a transaction involving commerce,’ they are
 16 subject to the . . . FAA”); *see also United States v. Sutcliffe*, 505 F.3d 944, 953 (9th Cir. 2007) (“the
 17 Internet is an instrumentality and channel of interstate commerce”) (internal citation omitted).
 18 Therefore, the FAA controls.

19 **B. Threshold Questions Of Arbitrability Must Be Decided By The Arbitrator.**

20 The FAA requires courts to compel arbitration “in accordance with the terms of the agreement”
 21 upon the motion of either party to the agreement, consistent with the principle that arbitration is a
 22 matter of contract. 9 U.S.C. § 4. To the extent that Plaintiff challenges the formation, validity,
 23 enforceability, scope, or waiver of the Arbitration Agreement, the Arbitration Agreement expressly
 24 provides that those issues are to be decided by the arbitrator rather than a court. This type of delegation
 25 clause, which delegates “gateway” questions about arbitrability to the arbitrator, has been recognized
 26 by courts as proper and enforceable so long as the parties “clearly and unmistakably” demonstrate
 27 their intent to have the arbitrator decide those questions. *Rent-A-Center, W.*, 561 U.S. at 70 (“An
 28 agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking

1 arbitration asks the court to enforce, and the FAA operates on this additional arbitration agreement
 2 just as it does on any other.”); *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1208-09 (9th Cir. 2016);
 3 *Brennan v. Opus Bank*, 796 F.3d 1125, 1130-32 (9th Cir. 2015).

4 Here, the parties “clearly and unmistakably” agreed to arbitrate arbitrability, and the Court
 5 should enforce that agreement. The Arbitration Agreement provides that the arbitrator, rather than the
 6 court, “shall have exclusive authority to resolve any disputes relating to the interpretation,
 7 applicability, enforceability or formation of this Arbitration Agreement . . . [and] shall also be
 8 responsible for determining all threshold arbitrability issues, including issues relating to whether the
 9 Terms are unconscionable or illusory and any defense to arbitration” Barajas Decl. ¶ 15, Ex. G,
 10 § 2.

11 In *Mohamed*, the Ninth Circuit considered a similar provision in an agreement between Uber
 12 and a Driver that delegated to the arbitrator authority to decide the “enforceability, revocability or
 13 validity” of the arbitration provision and concluded that the provision constituted “clear and
 14 unmistakable” intent to arbitrate arbitrability.⁷ 836 F.3d at 1108-10. Courts routinely find that similar
 15 language evidences an agreement to arbitrate arbitrability. *See, e.g., Momot v. Mastro*, 652 F.3d 982,
 16 988 (9th Cir. 2011) (language that delegated authority to arbitrator to determine the validity or
 17 application of any of the arbitration agreement’s provisions was a clear and unmistakable agreement
 18 to arbitrate the question of arbitrability); *Swinerton Builders v. Am. Home Assur. Co.*, No. C-12-6047
 19 EMC, 2013 WL 2237885, at *5 (N.D. Cal. May 21, 2013) (parties clearly and unmistakably agreed to

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 21 ⁷ Uber acknowledges that *Mohamed* upheld its similar arbitration agreement relating to Drivers,
 22 however, the substance of the discussion is on point, and numerous other courts have agreed with the
 23 Ninth Circuit that Uber’s delegation provision—which is similar to the one at issue here—clearly and
 24 unmistakably reflects an intent to delegate issues of arbitrability to the arbitrator. *See, e.g., Feld v.*
25 Uber Techs., Inc., LASC Case No. 19STCV26766 (2020); *Harounsheily v. Uber Techs., Inc.*, LASC
 26 Case No. 19STCV05712 (2019); *Sienkaniec v. Uber Techs., Inc.*, No. 17-CV-4489 (PJS/FLN), 2017
 27 WL 7791193 (D. Minn. Dec. 18, 2017); *Lathan v. Uber Techs., Inc.*, 266 F. Supp. 3d 1170 (E.D. Wis.
 28 2017); *Mumin v. Uber Techs., Inc.*, 239 F. Supp. 3d 507, 526 (E.D.N.Y. 2017), *recons. denied sub*
nom., *Ortega v. Uber Techs., Inc.*, No. 15CV7387NGGJO, 2017 WL 1737636 (E.D.N.Y. May 2,
 2017); *Zawada v. Uber Techs., Inc.*, No. 16-cv-11334, 2016 WL 7439198 (E.D. Mich. Dec. 27, 2016),
aff’d, 2018 WL 1313603 (Mar. 14, 2018); *Micheletti v. Uber Techs., Inc.*, 213 F. Supp. 3d 839 (W.D.
 Tex. 2016); *Lee v. Uber Techs., Inc.*, 208 F. Supp. 3d 886 (N.D. Ill. 2016); *Bruster v. Uber Techs., Inc.*, 188 F. Supp. 3d 658 (N.D. Ohio. 2016), *recons. denied*, 2016 WL 4086786 (N.D. Ohio Aug. 2,
 2016); *Rimel v. Uber Techs., Inc.*, No. 6:15-cv-2191-Orl-41KRS, 2016 WL 6246812 (M.D. Fla. Aug.
 4, 2016); *Sena v. Uber Techs. Inc.*, No. CV-15-02418-PHX-DLR, 2016 WL 1376445 (D. Ariz. Apr.
 7, 2016), *recons. denied*, 2016 WL 4064584 (D. Ariz. May 03, 2016).

1 delegate arbitrability to arbitrator where provision delegated to the arbitrator all issues regarding the
 2 “interpretation, application, formation, enforcement, or validity of this memorandum . . . including
 3 any question as to [the dispute’s] arbitrability” (emphasis omitted)); *Anderson v. Pitney Bowes, Inc.*,
 4 No. C 04-4808 SBA, 2005 WL 1048700, at *3 (N.D. Cal. May 4, 2005) (same as to provision
 5 delegating to the arbitrator all disputes regarding the “interpretation, applicability, or enforceability or
 6 formation of th[e] Agreement, including . . . any claim that all or any part of th[e] Agreement is void
 7 or voidable”). The Court should reach the same conclusion here.

8 By incorporating the AAA Consumer Arbitration Rules, the Arbitration Agreement
 9 underscores the parties’ delegation of gateway issues of arbitrability.⁸ *See Barajas Decl.* ¶ 15, Ex. G,
 10 § 2 (“Rules and Governing Law”). In *Brennan*, the Ninth Circuit held that “incorporation of the AAA
 11 rules constitutes clear and unmistakable evidence that contracting parties agreed to arbitrate
 12 arbitrability.” 796 F.3d at 1130. *Brennan* involved two commercial parties, but courts have extended
 13 its holding to delegation clauses in consumer contracts, including to an earlier version of Uber’s
 14 Terms. *See Cubria*, 242 F. Supp. 3d at 548; *Cordas*, 228 F. Supp. 3d at 992 (“clear weight of authority”
 15 supports conclusion that incorporation of the AAA rules effectively delegates arbitrability regardless
 16 of the sophistication of the parties); *accord McLellan v. Fitbit, Inc.*, No. 3:16-CV-00036-JD, 2017 WL
 17 4551484, at *2 (N.D. Cal. Oct. 11, 2017) (same). Thus, because the parties unambiguously agreed to
 18 delegate arbitrability issues to the arbitrator, both through an express delegation clause and the
 19 incorporation of the AAA Rules, the Court should enforce that agreement.

20 **C. Even If The Court Finds That It, Rather Than The Arbitrator, Should Decide**
 21 **Arbitrability, Both Gateway Issues Are Satisfied.**

22 The Court should compel arbitration even if it were to decide, contrary to the parties’
 23 delegation agreement, that it (rather than the arbitrator) should assess gateway questions of
 24 arbitrability. Where – unlike here – the parties have not contracted for arbitrability questions to be
 25 determined by the arbitrator, the Court’s role under the FAA is limited to determining: (1) whether

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 27 ⁸ AAA Consumer Rule 14(a) provides, in pertinent part, that the “arbitrator shall have the power to rule on his or her own
 28 jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the
 arbitrability of any claim.” AAA, Consumer Arbitration Rules at 17 (Jan. 1, 2016),
<https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>.

1 there is a valid agreement to arbitrate between the parties; and (2) whether the agreement covers the
 2 dispute. *See Geier v. m-Qube Inc.*, 824 F.3d 797, 799 (9th Cir. 2016) (per curiam). In conducting these
 3 inquiries, “as a matter of federal law, any doubts concerning the scope of arbitrable issues should be
 4 resolved in favor of arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1,
 5 24-25 (1983). Were the Court to reach this issue, both of these inquiries must be answered in the
 6 affirmative.

7 **1. Plaintiff Entered Into A Valid Agreement To Arbitrate.**

8 Plaintiff here has admitted that she agreed to Uber’s Terms of Use because she filed an
 9 arbitration demand and attached the Terms as the agreement to arbitrate justifying her filed demand.
 10 Even apart from her admission, there can be no dispute that Plaintiff accepted Uber’s Terms and
 11 thereby agreed to arbitrate her disputes with Uber. The validity of an agreement to arbitrate is assessed
 12 under state law. See 9 U.S.C. § 2. Under California law, mutual assent is the key to contract formation.
 13 *See Binder v. Aetna Life Ins. Co.*, 75 Cal. App. 4th 832, 850 (1999). Consent may be manifested
 14 through conduct. *Id.*; *see Windsor Mills, Inc. v. Collins & Aikman Corp.*, 25 Cal. App. 3d 987, 992
 15 (1972) (“an offeree, knowing that an offer has been made to him but not knowing all of its terms, may
 16 be held to have accepted, by his conduct, whatever terms the offer contains”). Thus, courts routinely
 17 enforce online agreements where users’ conduct indicates their consent to hyperlinked terms of service
 18 of which they had actual or constructive notice. *See, e.g., Nevarez v. Forty Niners Football Co., LLC*,
 19 No. 16-CV-07013, 2017 WL 3492110, at *6-9 (N.D. Cal. Aug. 15, 2017) (user bound by arbitration
 20 provision where click buttons with language below them alerting the user that clicking such buttons
 21 constituted consent to the website’s terms); *In re Facebook Biometric Info. Privacy Litig.*, 185 F. Supp.
 22 3d 1155, 1164 (N.D. Cal. 2016) (finding assent where the user clicked a “Sign Up” box with language
 23 beneath it that put him on notice that clicking the box constituted assent to the agreement); *Graf v.*
 24 *Match.com, LLC*, No. CV 15-3911 PA (MRWX), 2015 WL 4263957, at *4 (C.D. Cal. July 10, 2015)
 25 (enforcing arbitration provision in hyperlinked terms of use where website informed user that clicking
 26 on website button affirmed consent to terms of use); *Crawford v. Beachbody, LLC*, No. 14-CV-1583
 27 GPC, 2014 WL 6606563, at *3 (S.D. Cal. Nov. 5, 2014) (online customer who placed order was bound
 28 by contract terms when website stated that “By clicking Place Order below, you are agreeing that you

1 have read and understand the Beachbody Purchase Terms and Conditions," which were hyperlinked
 2 on the same webpage).

3 Assent is clear here. First, immediately above the "Sign up" button that Plaintiff had to click
 4 in order to sign up for an account or ever use Uber's Rider App, Uber advised that "[b]y signing up
 5 [the user] agree[s] to the Uber **Terms and Conditions** and **Privacy Policy**." Barajas Decl. ¶ 8.
 6 (emphasis in original). Plaintiff had the opportunity to click on the bolded, underlined "Terms and
 7 Conditions", indicating it was a hyperlink, to review Uber's Terms. *Id.* Below that sentence with
 8 hyperlinks was a checkbox next to a one-sentence notice in bold also stating, "**I agree to the Uber**
 9 **Terms and Conditions and Privacy Policy.**" Barajas Decl. ¶ 9, Exs. A-B. (Emphasis in original.)
 10 Uber's disclosures provided clear notice to Plaintiff of Uber's Terms and the fact that creating an
 11 account would constitute her consent to it. *See Cordas*, 228 F. Supp. 3d at 990–91 (by completing
 12 sign-up process and creating an Uber account, Uber rider affirmatively assented to Uber's terms and
 13 conditions); *Meyer*, 868 F.3d at 80; *Cubria, Inc.*, 242 F. Supp. 3d at 548. By creating her Uber account,
 14 Plaintiff thereby consented to Uber's 2012 Terms, including the Arbitration Agreement. (Barajas Decl.
 15 ¶¶ 4-10, Exs. A-D.)

16 Plaintiff's consent to arbitrate is also demonstrated by her continued use of the Uber Rider App
 17 after she received the November 2016 email, which contained a colored hyperlink to Uber's updated
 18 Terms and expressly highlighted a change in those Terms with respect to the Arbitration Agreement.
 19 In *West v. Uber Technologies*, the court analyzed the same November 2016 email in the context of a
 20 rider lawsuit and found assent on indistinguishable facts:

21 In addition to the registration process described above, Plaintiff also
 22 received an email on November 14, 2016 informing him of updates to
 23 the Arbitration Agreement; that email stated that continued use of the
 24 App would constitute agreement to the updated Terms. [Citations
 25 omitted.] . . . The email provided a link to the updated Terms, and also
 26 explained that continued use of the App would confirm agreement to the
 27 updated Terms. [Citation omitted.]

28 *Plaintiff continued using the App and Uber's services for a year after
 29 receiving that email, Courts have found that when consumers
 30 receive emails such as this one, continued use of the service or product
 31 constitutes assent to the updated terms. . . .*

No. 2:18-cv-3001-PSG-GJS, ECF No. 47, at 7 (C.D. Cal. Sept. 5, 2018) (citing cases) (emphasis

1 added). The same result was reached in *Nielsen v. Uber Technologies*, No. BC705695 (Cal. Super. Ct.
 2 Feb. 22, 2019) (granting Uber's motion to compel arbitration) (attached to Request for Judicial Notice
 3 as **Exhibit A**). There, the California Superior Court granted Uber's motion to compel arbitration,
 4 holding that because the plaintiff "used [Uber's] services to take four trips" after Uber sent the
 5 November 2016 email, the plaintiff "knew or should have known that her continued use of [Uber's]
 6 services would constitute acceptance of the arbitration clause in the terms and conditions." *Id.* at *6.

7 *West* and *Nielsen* are not alone. Courts regularly enforce agreements "where the website
 8 contains an explicit textual notice that continued use will act as a manifestation of the user's intent to
 9 be bound." *Nguyen v. Barnes & Noble, Inc.*, 763 F.3d 1171, 1177 (9th Cir. 2014); *see also Davis v.*
 10 *Nordstrom, Inc.*, 755 F.3d 1089, 1093 (9th Cir. 2014) ("Where an employee continues in his or her
 11 employment after being given notice of the changed terms or conditions, he or she has accepted those
 12 new terms or conditions."); *In re Facebook Biometric Info. Privacy Litig.*, 185 F. Supp. 3d 1155, 1167
 13 (N.D. Cal. 2016) (updated terms of use enforceable where "plaintiffs accepted and agreed to the
 14 current terms by continuing to use Facebook after receiving" email notice of updated terms).

15 Here, Plaintiff was notified of the updates to Uber's Terms & Conditions via the November
 16 2016 email, which instructed her to "read [the Terms of Service] fully," and provided a conspicuous
 17 hyperlink to the Terms, explaining, "you can access [the Terms] here." Barajas Decl. ¶14, Ex. F.
 18 Although not required, the email expressly referenced the Arbitration Agreement, stating that the
 19 updated terms "revise[] our arbitration agreement which explains how legal disputes are handled." *Id.*
 20 And Plaintiff was notified that "**[i]f you use our app or other services on or after [November 21,**
 21 **2016], you're confirming you've read and agree to the updated Terms.**" *Id.* (Emphasis added.)
 22 Plaintiff continued to use the Uber Rider App to network rides long after November 21; in fact, she
 23 did so more than 1,000 times between November 21, 2016 and July 1, 2020. Barajas Decl. ¶ 16.
 24 Plaintiff's continued use of the Uber Rider App following receipt of the November 2016 email
 25 constitutes assent to Uber's Terms and Conditions, including the Arbitration Agreement.

26 **2. Plaintiff's Claims Are Covered By The Arbitration Agreement.**

27 The FAA requires that courts compel arbitration "unless it may be said with *positive assurance*
 28 that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts

1 should be resolved in favor of coverage.” *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S.
 2 643, 650 (1986) (emphasis added, citation omitted). Here, the 2016 Arbitration Agreement extends
 3 to all claims or disputes “arising out of or relating to” the Terms or the rider’s “access to or use of”
 4 the Uber Rider App. (Barajas Decl. ¶ 15, Ex. G, §§ 2, 3.) The Arbitration Agreement’s use of the
 5 “arising out of or relating to” language should be interpreted broadly. *See Simula, Inc. v. Autoliv, Inc.*,
 6 175 F.3d 716, 720 (9th Cir. 1999); *Delgado v. Progress Fin. Co.*, No. 1:14-cv-00033-LJO-MJS, 2014
 7 WL 1756282, at *5 (E.D. Cal. May 1, 2014) (“The use of the ‘relat[ing] to’ language is a signal that
 8 the scope of the agreement is broad under Ninth Circuit case law and encompasses claims beyond the
 9 four corners of the contract.”). In the face of this language, “Plaintiff’s claims need only ‘touch
 10 matters’ covered by the contract containing the arbitration provision.” *Koyoc v. Progress Fin. Co.*, No.
 11 CV 13-09165-RSWL (AGRx), 2014 WL 1878903, at *4 (C.D. Cal. May 9, 2014) (citation omitted).

12 Plaintiff’s claims fall squarely within the broad scope of the Arbitration Agreement. *See*
 13 Barajas Decl. ¶ 15, Ex. G, § 2 (“Arbitrator’s Decision”). Plaintiff alleges that she was denied service
 14 by Drivers due to the presence of her service animal, and she sought rides from those Drivers via the
 15 Uber Rider App . Compl., ¶¶ 1, 42, 55-76. Thus, Plaintiff’s claims unquestionably “aris[e] out of or
 16 relat[e]” to Uber’s services: the Uber Rider App. Moreover, because the agreed upon Terms contain
 17 no provision that *excludes* the claims from arbitration, Plaintiffs cannot overcome the presumption of
 18 arbitrability. *See Grand Wireless*, 748 F.3d at 8-9 (holding that plaintiff failed to rebut the presumption
 19 of arbitrability because it “needed to show that the parties intended to exclude this type of dispute from
 20 the scope of the arbitration clause, not merely that the arbitration clause lacked explicit language
 21 covering” the claims); *see also Harounsheily v. Uber Techs. Inc.*, LASC Case No. 19STCV05712
 22 (Aug. 8, 2019) (granting motion to compel plaintiff’s claims arising from alleged denial of service
 23 based on her disability to arbitration). In addition, statutory and contract claims—like those Plaintiff
 24 asserts—related to the subject of the arbitration provision (here, Uber’s services), are governed by that
 25 same provision. *See, e.g., Cruise v. Kroger Co.*, 233 Cal. App. 4th 390, 396-97 (2015) (compelling
 26 arbitration of statutory claims even when arising from dispute regarding employment). In short,
 27 whether determined by the Court or an arbitrator, the arbitration provision here is broad enough to
 28 encompass Plaintiff’s claims and Plaintiff should be compelled to arbitrate.

3. The Arbitration Agreement Is Not Unconscionable.

Plaintiff cannot avoid the Arbitration Agreement she entered into with Uber by claiming that the agreement is unconscionable. “The party resisting arbitration bears the burden of proving unconscionability.” (*Pinnacle Museum Tower Ass’n v. Pinnacle Mktg. Dev. (US), LLC* (2012) 55 Cal.4th 223, 247.) “[P]rocedural and substantive unconscionability must *both* be present” to permit a court “to refuse to enforce a contract.” *Sanchez v. Valencia Holding Co., LLC* 61 Cal. 4th 899, 820 (2015) (internal citation omitted). Uber’s 2016 Terms and Arbitration Agreement are consumer friendly and cost effective, and Plaintiff cannot meet this burden.

The Arbitration Agreement is not procedurally unconscionable because (1) it is not oppressive and (2) Plaintiff was not surprised by it. *Pinnacle Museum*, 55 Cal. 4th at 246. Plaintiff had a meaningful choice whether to accept the Terms and take advantage of the Uber Rider App—she could have easily declined those terms and used an alternative means of networking trips via the Lyft App, hailing taxi, and/or using public transportation. *See Belton v. Comcast Cable Holdings, LLC*, 151 Cal. App. 4th 1224, 1245 (2007) (“The availability of alternative sources from which to obtain the desired service defeats any claim of oppression, because the consumer has a meaningful choice.”).

Nor did the provision “surprise” Plaintiff. When Plaintiff signed up for an account, the 2012 Terms containing the Arbitration Agreement were prominently called out and hyperlinked on the account sign-up page and were readily accessible to Plaintiff. Barajas Decl. ¶¶ 5-10, Exs. A-B. Nor could Plaintiff claim surprise after Uber sent her updated Terms in November 2016. Uber “was under no obligation to highlight the arbitration clause of its contract, nor was it required to specifically call that clause to [Plaintiff’s] attention.” *Sanchez*, 61 Cal. 4th at 914. Notwithstanding, Uber did just that in its November 2016 email to Plaintiff, specifically calling out the Arbitration Agreement as a “key highlight” and hyperlinking the updated Terms. Barajas Decl., ¶14, Ex. F. Moreover, the Arbitration Agreement is written in plain English and is conspicuously displayed under the large heading “Arbitration Agreement”—not “hidden within a prolix printed form.” Barajas Decl. ¶ 15, Ex. G; *Jones v. Wells Fargo Bank*, 112 Cal. App. 4th 1527, 1539 (2003); *see Serafin v. Balco Properties Ltd., LLC*, 235 Cal. App. 4th 165, 179 (2015) (“any procedural unconscionability is ‘limited’” where arbitration provision is highlighted). Under this heading, the 2016 Terms clearly state in bold: “**By agreeing to**

1 the Terms, you agree that you are required to resolve any claim that you may have against Uber
 2 on an individual basis in arbitration” Barajas Decl. ¶ 15, Ex. G (emphasis in original).

3 The Arbitration Agreement is also not substantively unconscionable. To prove substantive
 4 unconscionability, Plaintiff must show that the arbitration clause is “so one-sided as to shock the
 5 conscience.” *Pinnacle Museum*, 55 Cal. 4th at 246 (internal quotation marks and citation omitted). Far
 6 from being one-sided, the Arbitration Agreement is bilateral and safeguards Plaintiff’s ability to
 7 pursue a small claims action or an individual arbitration. Barajas Decl. ¶ 15, Ex. G. It also includes
 8 cost terms that benefit Plaintiff. Indeed, Uber has agreed to pay all of Plaintiff’s “filing, administrative
 9 and arbitrator fees” for arbitration of non-frivolous claims under \$75,000. *Id.* And, Plaintiff is not
 10 faced with significant travel expenses because Uber has agreed to conduct the arbitration in Plaintiff’s
 11 home county. *Id.* These provisions defeat any claimed unconscionability. *See, e.g., Ulbrich v.*
 12 *Overstock.com, Inc.*, 887 F. Supp. 2d 924, 933-34 (N.D. Cal. 2012) (rejecting unconscionability
 13 challenge even where arbitration provision required individuals to share in costs of arbitration, set the
 14 arbitration out-of-state, and lacked mutuality in the remedies available to the parties).

15 **D. Plaintiff Cannot Avoid The Arbitration Agreement Simply Because Uber Briefly
 16 And Inadvertently Made Late Payments On Invoices From Two Unrelated Cases.**

17 Plaintiff’s Complaint suggests that she may try to avoid enforcement of the Arbitration
 18 Agreement by arguing either that Uber waived its right to enforce the Arbitration Agreement or that
 19 Uber somehow breached the Arbitration Agreement by virtue of the AAA’s April 18 Letter or the
 20 events leading up to that Letter. *See* Compl., ¶¶52-53. Such arguments would fail.

21 First, as discussed in Section IV.B. above, any threshold concerns about waiver or breach of
 22 the Arbitration Agreement are for the arbitrator—not this Court—to decide, as Plaintiff agreed to
 23 delegate “all threshold arbitrability issues,” including waiver, to the arbitrator. *See* Barajas Decl., ¶
 24 15, Ex. G, § 2; *see also Mohamed*, 836 F.3d at 1108 (holding “all of Plaintiffs’ challenges to the
 25 enforceability of the arbitration agreement, save [plaintiff’s] challenge to the enforceability of the
 26 PAGA waiver in the 2013 Agreement, should have been adjudicated in the first instance by an
 27 arbitrator and not in court.”); *see also Cordas*, 228 F. Supp. 3d at 992 (ing “the clear weight of authority
 28 supports the conclusion Uber’s terms and conditions provide clear and unmistakable evidence of the

1 parties' intent to delegate questions of arbitrability to an arbitrator, and [the plaintiff] has advanced no
 2 persuasive argument to the contrary"); *Feld v. Uber Techs. Inc.*, LASC Case No. 19STCV26766, April
 3 17, 2020 Minute Order (finding "that the arbitrator has the clearly delegated authority 'to resolve any
 4 disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration
 5 Agreement, including any claim that all or any part of this Arbitration Agreement is void or
 6 voidable.'") (attached to Request for Judicial Notice as **Exhibit B**).

7 These cases apply with equal force here, requiring Plaintiff to present any issue concerning
 8 waiver or breach of contract to the arbitrator in the first instance. The AAA informed the parties it is
 9 prepared to adjudicate this case. *See Jackson Decl.*, ¶10, Ex. D. Thus, there is no barrier to Plaintiff
 10 asserting her objections to arbitrability based on Uber's conduct *to the arbitrator*.

11 Second, even if Plaintiff had not agreed to delegate threshold issues to the arbitrator, she cannot
 12 avoid enforcement of the Arbitration Agreement based on the AAA's April 18, 2020 Letter to the
 13 Parties declining to administer the case based on inadvertent issues unrelated to this matter. In the
 14 context of one party's non-payment of arbitration filing fees, courts in the Ninth Circuit have declined
 15 to enforce an arbitration agreement when either (a) one party to the agreement affirmatively refuses to
 16 participate in arbitration, or (b) the arbitral forum has conclusively refused a case because a party has
 17 failed to pay its filing fee in that case. *See Brown v. Dillard's, Inc.*, 430 F.3d 1004, 1013 (9th Cir.
 18 2005) (declining to enforce arbitration agreement where Defendant affirmatively refused to arbitrate
 19 Plaintiff's claim after immediate and repeated notice over two months of Plaintiff's intent to arbitrate,
 20 and finding, under those circumstances, Plaintiff had no choice but to file in court); *Sink v. Aden
 21 Enters.*, 352 F.3d 1197, 1198 (9th Cir. 2003) (declining to send parties back to arbitration where
 22 defendant did not pay fee by deadline nor after notice from the plaintiff that it would seek a default
 23 award if Defendant did not pay the required fees within two weeks).

24 In stark contrast to these cases, Uber did not actively refuse to participate in Plaintiff's filed
 25 arbitration, nor did Uber fail to pay its fees for the matter Plaintiff filed with the AAA. In fact, the
 26 AAA never *asked* Uber to pay any fees related to Plaintiff's Demand because it closed the case before
 27 Uber was even served with, or otherwise made aware of, the Demand. *Jackson Decl.*, ¶¶ 3-5, 12.
 28 AAA closed the case due to inadvertent administrative payment errors resulting from two entirely

1 unrelated matters, which Uber promptly remedied days after learning about it through the AAA's April
 2 18, 2020 correspondence. *Id.*, ¶¶ 6-7. Uber never had any intention of waiving its right to arbitrate
 3 nor cause prejudice to Plaintiff. *Id.* ¶ 13. Uber then notified Plaintiff and the AAA that it is prepared
 4 to arbitrate Plaintiff's claims. *Id.*, ¶¶ 10-11. And, AAA agreed to administer the case once Plaintiff
 5 re-filed the Demand. *Id.*, ¶ 10, Ex. D.

6 Uber has not breached its obligations with respect to Plaintiff, nor waived its rights, much less
 7 materially so.⁹ Moreover, unlike in *Sink*, where the AAA issued a default against the defendant, the
 8 AAA in this case expressly informed the parties that the case can proceed in that agreed upon forum
 9 as soon as Plaintiff re-files her demand. This is not a circumstance wherein Plaintiff is being denied
 10 the arbitration forum and had "no choice but to come to court." Rather, Plaintiff could and should
 11 have reinitiated the arbitration process more than two months ago after the administrative and
 12 inadvertent error concerning unrelated cases was resolved. In short, Plaintiff cannot escape her
 13 obligations under the Arbitration Agreement solely because of the AAA's April 18 Letter or its
 14 temporary declination.¹⁰

15 **V. CONCLUSION**

16 Plaintiff cannot escape her agreement to arbitrate this dispute with Uber. An enforceable
 17 Arbitration Agreement exists and covers the dispute at issue here. The Court should therefore order
 18 Plaintiff to arbitrate all of her claims against Uber and stay Plaintiff's claims pending the outcome of
 19 arbitration.

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24 ⁹ Plaintiff also cannot claim to have been prejudiced by the 12-day period between Uber learning about
 25 the payment issues set forth in the April 18, 2020 AAA Letter and Uber's resolution of the issue on
 26 April 30, 2020. The AAA has unambiguously informed the parties that it will administer the case if
 Plaintiff re-files her demand, and it is Plaintiff who decided to prolong the delay in administering her
 case by refusing to allow the AAA to re-open the arbitration. Moreover, Plaintiff filed her federal
 Complaint before even serving Uber with her AAA Demand.

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¹⁰ Uber respectfully requests that the Court stay further proceedings pending arbitration pursuant to
 FAA section 3. 9 U.S.C. § 3; *Thinket Ink Info. Res., Inc. v. Sun Microsys., Inc.*, 368 F.3d 1053, 1060
 (9th Cir. 2004) (courts have discretion to stay or dismiss actions compelled to arbitration).

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/s/ Andrew M. Spurchise
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4 ANDREW M. SPURCHISE
5 LITTLER MENDELSON, P.C.
6 Attorney for Defendants
7 UBER TECHNOLOGIES, INC., RASIER,
8 LLC and RASIER-CA, LLC
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